

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

DANIEL RODRIGUEZ, JR.,
Petitioner

v.

Civil No. 3:19cv845 (DJN)

COMMONWEALTH OF VIRGINIA,
Respondent.

MEMORANDUM OPINION

This matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Roderick C. Young (ECF No. 9). Petitioner, a Virginia inmate proceeding *pro se*, filed a 28 U.S.C. § 2254 petition (§ 2254 Petition,” ECF No. 1). However, before a state prisoner can bring a § 2254 petition in federal district court, the prisoner must first have “exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). Exhaustion is accomplished by presenting the claims to the Supreme Court of Virginia for review either on direct appeal or in a collateral proceeding. The record fails to indicate that Petitioner has properly exhausted his state court remedies with respect to his claims. Accordingly, on January 14, 2020, Magistrate Judge Young entered a Report and Recommendation wherein he recommended that the Court dismiss the action without prejudice for lack of exhaustion. The Court advised Petitioner that he could file objections within fourteen (14) days after the entry of Report and Recommendation. Petitioner did not file objections.

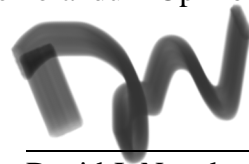
“The magistrate makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court.” *Estrada v. Witkowski*, 816 F. Supp. 408, 410 (D.S.C. 1993) (citing *Mathews v. Weber*,

423 U.S. 261, 270–71 (1976)). This Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “The filing of objections to a magistrate’s report enables the district judge to focus attention on those issues — factual and legal — that are at the heart of the parties’ dispute.” *Thomas v. Arn*, 474 U.S. 140, 147 (1985) (footnote omitted). In the absence of a specific written objection, this Court may adopt a magistrate judge’s recommendation without conducting a de novo review. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

There being no objections, and the Court having determined that the Report and Recommendation is correct on its merits, the Report and Recommendation (ECF No. 9) will be ACCEPTED and ADOPTED. The action will be DISMISSED WITHOUT PREJUDICE. A certificate of appealability will be DENIED.

An appropriate Order will accompany this Memorandum Opinion.

The Clerk is DIRECTED to send a copy of this Memorandum Opinion to Petitioner.

A stylized, handwritten signature in dark ink, appearing to be 'DN' or similar, positioned above a horizontal line.

/s/

David J. Novak
United States District Judge

Date: March 25, 2020
Richmond, Virginia